No. 16089

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL UNION NO. 13–433, AFL–CIO, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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1. Respondent complains that it had no opportunity to be heard by the Board on the critical issues in the case, and that the case should be remanded to permit respondent to develop "certain items in the record" which "might well be determinative" (Br. 9–10). We submit that examination of the issues respondent seeks to inject serves only to underscore the validity of the Board's determination (of which respondent complains) not to reopen the case for further evidence (Br. 9).

By respondent's own admission "Most of the facts are undisputed" and respondent has "no serious disagreement" with the facts as stated in our opening brief (Br. 3). The facts which respondent seeks to

adduce would be completely irrelevant to the issues in the case. Respondent would inquire into Hatfield's own attitude about his job (a reference to his discharge for cause some months after the events in issue), whether Hatfield had been made whole for loss of pay, and whether the Company advised Hatfield to tender his dues and fees (Br. 10). Whether Hatfield was a good or interested worker, whether he suffered financial loss, and whether he was advised by the Company to tender his dues are all irrelevant to whether on this record the Union could lawfully compel his discharge after he had tendered his dues. We submit that the relevant issues are fairly joined before this Court, that all matters were sufficiently aired before the Board (see R. 21–30 and n. 19, indicating that the Trial Examiner passed upon the waiver issue, and R. 41–42, indicating that respondent raised the issue with the Board), and that the Court should therefore proceed to decide the case without directing an inquiry into the three extraneous matters respondent seeks to inject.

2. Respondent's discussion of "estoppel" and "waiver" (Br. 10–18) overlooks the critical factor, emphasized in our main brief, pp. 19–20, that Gordon acted as respondent's agent in accepting Hatfield into the Union. To say that Gordon was unaware of the Union's determination not to accept Hatfield is simply to place this case on all fours with *N. L. R. B.* v. *Cement Masons,* 225 F. 2d 168, 171 (n. 3), 174 (C. A. 9), where a union representative took action which bound the union even though, unknown to him, the

union had determined against his taking such action.[1] The suggestion that Hatfield was aware Gordon had no authority to accept him into the Union is unsupported by the record. Dickey's testimony relied on by respondent (Br. 13–14) relates to events before the union meeting (R. 160–161); after the meeting Dickey merely told Hatfield "to talk to the Business Agent" (R. 164), not that Hatfield could not join the Union.[2]

For the above reasons and for those stated in our main brief, we respectfully submit that the Board's order should be enforced.

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[1] As pointed out in our main brief, p. 6, the union membership in this case was kept in ignorance of critical facts when it ratified the demand for Hatfield's discharge.

[2] The Court's attention is respectfully directed to the related litigation of *Crimmins* v. *Smith Lumber Co.*, 329 P. 2d 496, 498 (Cal. Dist App.), where the court observed that the complaint "failed to allege facts showing that all of the conditions precedent to the defendant's duty to discharge Hatfield have happened or have been excused." The Union's allegations in the *Crimmins* case are strikingly inconsistent with the facts established in this record. See 329 P. 2d at 497–498.

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